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09/471,101	12/21/1999	CHARLES H. REYNOLDS	CYBE.001US1	7011

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EXAMINER

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/471,101
Filing Date: December 21, 1999
Appellant(s): REYNOLDS, CHARLES H.

Stephen J. LeBlanc
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 19 March 2004.

(1) *Real Party in Interest*

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A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Appellant identifies copending 09/309321. A brief has not been entered in the copending application at this time, but appellant's statement is interpreted as indication that a brief was or will be filed in the copending application.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

This appeal involves claims 1-3, 5-9, 13-14, 16-17, 21-31 and 33-37.

Claims 4, 10-12, 15, 18-20 and 32 been canceled.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is substantially correct, but lacks reference to the specification by page and line number and to the drawings by reference

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character as required by 37 CFR 1.192(c)(5). Therefore, the examiner would like to make reference to the background in page 1 line 28 - page 2 line, the summary in page 3 lines 2-33 and the description of fig. 9 in page 7 line 17 - page 8 line 23. Fig. 9 includes control on signal line P5. It is further noted that the summary refers to multiple, independently controlled power circuits, but independent claims 1 and 13 require only a single control circuit and single controlled power output socket or outlet.

(6) Issues

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: The statement under the "Issues" heading identify the date of filing of the application and the final amendment. The issue discussed by appellant under the "Argument" heading is the properness of the obviousness rejection of claims 1-3, 5-9, 13-14, 16-17, 21-31 and 33-37. A second issue not discussed by appellant is the properness of the provisional obviousness double patenting rejection of claims 1-3, 5-9, 13-14, 16-17, 21-31 and 33-37.

(7) Grouping of Claims

The appellant's statement in the brief that the pending claims do not stand or fall together is not agreed with because the brief does not include reasons in support of the statement

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that this grouping of claims does not stand or fall together required by 37 CFR 1.192(c)(7). Appellants arguments on page 4 of the brief refers to claims 5 and 17 for including a relay that is not in these claims. Appellants arguments on page 11 of the brief refer to claims 13 and 14 for including "without unacceptable interference" and "not interfering with network communication," respectively. But these limitations are not in the recited claims. The arguments on page 11 refer to claim 1 for including a network socket able to receive a standard network cable connector able to receive a control sing transmitted over a wire of a network cable. The arguments in the brief are interpreted as directed to this standard network cable of claim 1. Therefore the rejection appealed claims 1-3, 5-9, 13-14, 16-17, 21-31 and 33-37 stand or fall together with claim 1 as exemplary.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5644174	CHENG et al	07-1997
5923103	PULIZZI et al	07-1999
5198806	LORD	03-1993

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EEM 96 electronic engineers master catalog published by Hearst Business Communications (c) 1995, pp. D2260--61, D2326-29, D2340-43.

Norton's Telecom Dictionary by Harry Newton, 03-1998, page 45.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-3, 5-9, 13-14, 16-17, 21-32 and 33-37 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 09/309321. Although the conflicting claims are not identical, they are not

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patentably distinct from each other because the limitations of "wherein said first socket is able to receive a standard network cable connector and able to receive a control signal transmitted over a wire of a network cable; said network cable also carrying network communication signals over separate data wires" in copending SN 09/309321 corresponds to the limitation of "a first network socket located on said distinguishable surface; wherein said first network socket is able to receive a standard network cable connector and able to receive a control signal transmitted on one wire of a network cable also carrying network data communication signals on one or more separate data wires" in the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

ART REJECTION

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-3, 5-9, 13-14, 16-17 21-31 and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over CHENG '174 (US 5644174) or PULIZZI (US 5923103) in combination with EEM 96 electronic engineers master catalog published by Hearst Business Communications, Inc. and Lord (US 5198806) and Newton's Telecom

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Dictionary.

CHENG '174 discloses a universal AC sequencer for a server. The sequencer includes first control signal (input) socket 204, second control signal (pass thru output) socket 208, status indication LED's 216, switched power output sockets 130,140 controlled by control circuitry 250 including relays RLYM, RLY2. An IED AC input socket is included for a detachable power line or cord. The power sockets and control in socket are shown on a different parallel sides in fig. 3, but a housing is not particularly discussed. See col. 1 lines 1-10, col. 2 line 1 - col. 6 line 55.

PULIZZI discloses a remote switched output power controller 10 including first control signal (input) sockets 142,160, second control signal (pass thru output) socket 144,162, status indication LED's 30, switched power output sockets 16 controlled by control circuitry 18 including relays 60-76. The power sockets and control in socket are shown on a different parallel side in fig. 1, but a housing is not particularly discussed. See col. 1 line 46 - col. 4 line 62, col. 5 line 48 - col. 7 line 65. Pulizzi includes standard network connections such as RS232 networks in the abstract and col. 9 line 13.

EEM 96 discloses rack mounted remote controlled power supplies such as the MPD-100R MPD-100 IEC including a 1 3/4 inch

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high box housing for mounting in 1 standard rack unit, remote on/off control sockets on front, IEC power input socket for detachable line or cord on rear and switched power output sockets on rear. The TPC 115-10 and TPC 115-10/MTD include the above features and indicator lights. The IPC 3202 includes all the above features except only a single input on the rear is shown. The satellite antenna lightning arrester system on page 2260 includes RJ45 phone/data sockets on a 1.75 inch rack mount unit. See pages 2260-2261, 2326-2329, 2340-2343, especially pages 2260 and 2341.

Lord discloses an analogous art remote power control system with a power control relay 220 connected to a line of a standard interface cable to control power via switch 220 without microprocessor decoding the signal. See fig. 3, col. 5 lines 1-11 and col. 6 line 53 - col. 7 line 35. Lord recites the advantages of simple and flexible in col. 2 lines 3-9.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Cheng '174 or PULIZZI to include the housing limitations of EEM 96 because Cheng and PULIZZI refer to rack mount or stacked units, because EEM 96 discloses the claimed rack mount housing for analogous art remote controlled power supply including devices by PULIZZI and because it has been held that rearranging parts

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of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included in the combination applied above power control signals communicated on a pin or wire of standard network socket(s) or cable(s) such as standard RS-232C connector or cable, while other pins or wires are passed through as disclosed in Lord and to have included circuitry turned on or off directly in response to the high/low state of a control signal received on one pin of a pair of sockets without decoding digital data received in the control signal in view of Lord disclosing power control relay 220 in order to allow power control of network devices with a simple and flexible circuitry.

The modem of Lord is a network device separate from the device 10 corresponding the network controller such as a router generating power control signals on page 3 lines 9-17 of appellant's disclosure. In response to appellants request for support that a modem is a network device, the examiner is relying on the definition of network in Newton's Telecom Dictionary to show that networks connect computers and computer related things such as modems. Therefore, modems are network devices.

The inclusion of multiple pairs of control sockets associated with one or more corresponding independently controlled power supply sockets would have been obvious in view of the various configurations shown in EEM 96 with multiple remote I/O connections associated with multiple switched power, because plural power supply sockets and corresponding network sockets was admitted as prior art on page 2 lines 1-12 of appellant's specification and because plurality of part for multiplied effect is well known to be obvious. RJ-45 would have been obvious in view of the Lord disclosing use of any standard data communications interface and EEM 96 showing RJ-45 as a standard data communication interface on rack mounted components.

(11) Response to Argument

5. Appellant's arguments filed on 3-19-04 with respect to claims 1-3, 5-9, 13-14, 16-17, 21-31 and 33-37 have been considered but the are not persuasive.

Appellant has not argued the provisional obviousness double patenting rejection. Therefore the rejections is proper.

Regarding LORD, initially it is noted that Appellant did not present any arguments regarding the LORD patent in the final response filed 4-8-03. The examiner considered this lack of argument as agreement that the rejection was proper in the 6-10-

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03 final rejection. Appellant's arguments in the brief regarding LORD are being considered by the examiner for the first time in this application in this answer.

Appellant states that control software in LORD is used to turn off power if a user is not authorized. The examiner disagrees because the device 10 in LORD switches power independent of the software in the computer. Col. 6 line 56 - col. 7 line 35 discloses switching power without any reference to control software. The software in LORD runs on the computer (not device 10) to provide secure access to the computer after power-up. The software does not control the power. Col. 5 line 65 - col. 6 line 22 of LORD discloses software control of secure access by suppressing computer output to suspend any usefulness until a proper password is provided.

Appellant states that the power circuit is not connected to a network or external communication signal, but to a signal form a local modem. This statement does not correspond to claim 1 requiring network data and a control signal to control power where the control signal is not identified as a network or external control signal. Claim 13 includes control by a signal that is not identified as a network or external control signal and further lacks network data. The examiner notes that LORD includes network data by passing all signals in col. 6 lines 59-

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62 and the control signal is provided by the carrier detect on cable 60 in col. 6 line 62 - col. 7 line 8.

Appellant states that LORD includes a connection between a local modem and local computer to control a relay 220 similar to claims 5 and 17, but only turns the local computer on, not off. The examiner contends that that this local connection is sufficient because the claims do not require a remote connection. Initially it is noted that claims 5 and 17 are directed to housing limitations, not the relay. The examiner disagrees with the statement that LORD only turns power on because col. 5 lines 8-11 includes activating or deactivating the power control in response to the carrier detect signal. The control relay 220 operates in the same manner.

Appellant asserts that the examiner is improperly modifying LORD to use a signal received directly over a communication channel that would make LORD unsuitable for its intended purpose. The examiner disagrees because the device 10 of LORD is directly connected to cable 60 that provides a communication channel without any modification by the examiner. The appellant argues that LORD does not teach any direct operative connection between a control signal line carried over a network and an on/off mechanism. The examiner disagrees because the carrier detect line of cable 60 is directly connected to device 10 of

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LORD. Further, claim 1 only specifies operatively connected, not directly connected. Appellant's argument that there is no carrier detect signal on the telephone line or network 45 is not persuasive because the examiner is relying on cable 60 as the network cable, not the external telephone line. Appellant's invention does not specify an external or remote network control signal on an external or remote network cable, only a network cable with control signal and network data that is provided by cable 60 of LORD.

Appellant continues to argue that LORD only shows a locally generated signal through a local interconnect or interface by cable 60 that is not a network cable. Again, the examiner disagrees because Appellant does not require a remote network. Further, the cable 60 of LORD may be RS232 in col. 7 line 20 of LORD and the abstract of PULIZZI refers to an RS232 network. Appellant again states that LORD does not turn off power, which is incorrect for the reasons stated above referring to the activate/deactivate by carrier detect in col. 5 lines 8-11 of LORD.

Appellant argues that the examiner asserts that local dial up modem connected by a local serial interconnect cable to a local computer of LORD is equivalent to a network connection using a router because the examiner refers to the modem

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generating carrier detect to control power being similar to appellants router that generates power control signals on page 3 lines 9-17 of appellant's disclosure without the examiner providing support for this assertion. The examiner notes that the proper passage in appellant's disclosure is page 7 lines 25-32 that refers to a "controlling network device such as a router" places the control signal on a line causing a control relay to disconnect power. The examiner did not assert that the modem of LORD is a router, but that it is a controlling network device generating a control signal. Appellant's invention does not require a direct connection to the network without a modem, but specifies a cable carrying network data that is provided by the cable 60 of LORD. Appellant's disclosure includes a network device providing the control signal that corresponds to the modem providing a control signal in LORD. In response to appellants request for support, the examiner is relying on the definition of network in Newton's Telecom Dictionary to show that networks connect computers and computer related things such as modems. Therefore, modems are network devices. The examiner does not need to show support for a router because appellant's claims do not include a router and the disclosed invention only requires a network device.

The argument that the examiner has provided no evidence

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that the local interconnect cable in LORD is equivalent to a standard network connection that is addressable from a far distant router over standard network cables is not persuasive because appellant's invention does not include addressing from a far distant router. No addressing is claimed. No distance is claimed. No network is claimed. The cable in LORD carries network data and a power control signal, which is all that is required by the claims. Further, this RS232 cable in LORD is a network cable because Pulizzi refers to RS232 connections as networks.

In response to the argument that the examiner lacks support for modem and computer being separate network devices, the examiner again refers to the definition of network in Newton's Telecom Dictionary to show that networks connect computers and computer related things such as modems. Therefore, modems and computers are network devices. The argument that the examiner improperly attempts to equate interconnections and networks is not persuasive because appellant only claims a network cable, not a network. The cable 60 in LORD clearly carries network data and is therefore a network cable. The argument that there is no support in the art for interpreting a local, unshared connection between a dial-up modem and a personal computer as "networking" is not persuasive because the invention does not

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required shared networking, only a cable carrying network data and a power control signal. Further, this RS232 cable in LORD is a network cable because Pulizzi refers to RS232 connections as networks.

The argument that the EEM 96 catalog, Pulizzi and Cheng lack power control using a standard network cable carrying network data and a line carrying a power control signal is not persuasive because LORD is applied to teach this limitation. Appellant's arguments that the applied references lacks the limitation of circuitry turned on or off directly in response to the high/low state of a control signal received at pin or wire of a the socket pair is not persuasive because this would have been obvious in view of Lord for the reasons discussed in the rejection made above. The modem of Lord is a separate network device corresponding the network controller such as a router generating power control signals on page 3 lines 9-17 of appellant's disclosure.

The argument that Pulizzi includes RS422 or RS485 network and an RS232 network that are two entirely different and separate parallel connections is not persuasive because appellant's claims only require a network cable. The claims do not specify any limitations of a network, only a network connector and a cable carrying network data. Either network of

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Pulizzi would include this. The claims do not prohibit two parallel networks. Note that dependent claim 2 in Pulizzi adds the limitation of two parallel networks so that claim 1 of Pulizzi does not require two parallel networks. Further, RS422 and RS485 are extensions or improvements of the RS232 standard to provide increased distance. Therefore, these networks are not completely separate. What is important here is that Pulizzi disclose that an RS232 connection is a network so that the RS232 connector in Lord is a standard network connector and the RS232 cable in Lord is a standard network cable.

The arguments that Cheng has a daisy chain connection without the claimed network cable or connector is not persuasive in view of the connection of Lord corresponding to appellant's claimed manner of connection for the purpose of simple and flexible remote power control.

The argument that Cheng, EEM 96 and Pulizzi lack direct operative connection between a signal line of standard network sockets and the relays is not persuasive in view of Lord.

Appellants arguments on page 11 of the brief refer to claims 13 and 14 for including "without unacceptable interference" and "not interfering with network communication," respectively. But these limitations are not in the recited claims. Therefore these arguments cannot be persuasive.

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The argument that there is no motivation to combine the references is not persuasive because LORD includes the motivation of simple and flexible design in col. 2 lines 8-9. Combination with the rack mount units of the EEM 96 catalog is suggested by Cheng and Pulizzi referring to rack mount or stacked units.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Edwin C. Holloway, III

Primary Examiner

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June 14, 2004

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